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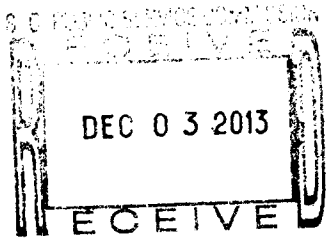
December 2, 2013



Via Hand Delivery
The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: ***South Carolina Energy Users Committee v. South Carolina Electric & Gas; Office of Regulatory Staff, Sierra Club, Pamela Greenlaw and Sierra Club is Respondent/Appellant***
Docket No. 2013-000529

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Initial Reply Brief of Appellant-Respondent South Carolina Energy Users Committee, which I do hereby submit for filing in reference to the above-captioned matter. I have also enclosed an extra copy of this document, which I would ask you to date stamp and return to me via my courier. By copy of this letter, I am serving all other parties of record with the above-referenced document. If you have questions or require any further information, please do not hesitate to contact me.

Thank you for your time and assistance.

Sincerely,

Elliott & Elliott, P.A.

Scott Elliott

SE/cje
Enclosures
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THE SUPREME COURT OF SOUTH CAROLINA

Appellate Case No. 2013-000529

South Carolina Energy Users Committee,

Appellant-Respondent,

v.

South Carolina Electric & Gas, Office of Regulatory Staff, Pamela Greenlaw,

Respondents,

and Sierra Club, is Respondent-Appellant.

PROOF OF SERVICE

I, the undersigned, do hereby certify that I have this date served the Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal on each of the below-named parties by forwarding a copy of each of these documents to the addresses listed through the United States Mail, first-class postage prepaid:

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December 2, 2013

THE SUPREME COURT OF SOUTH CAROLINA

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South Carolina Energy Users Committee,

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South Carolina Electric & Gas, Office of Regulatory Staff, Pamela Greenlaw,

Respondents,

and Sierra Club, is Respondent-Appellant.

INITIAL REPLY BRIEF OF APPELLANT-RESPONDENT SOUTH CAROLINA ENERGY USERS COMMITTEE

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I.

THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION ERRED AS A MATTER OF LAW IN AUTHORIZING THE RESPONDENT SCE&G TO RECOVER CAPITAL COSTS WHICH ARE IMPRUDENT UNDER BASE LOAD REVIEW ACT.

The Respondents SCE&G and Office of Regulatory Staff ("ORS") concede that the standard of prudency applicable to S.C. Code Ann. Sections 58-33-270(E) and 58-33-275(E) are the same standard. To be prudent, the Base Load Review Act ("BLRA") requires that those costs approved by the Commission below be used and useful for utility purposes and not be the result of the failure of the utility to anticipate them in its BLRA application (or to avoid them altogether). The additional capital costs approved by the Commission as prudent could have been anticipated at the time of SCE&G's 2008 BLRA application, and for the reasons hereinafter set out, the additional costs were imprudent and the Commission erred in authorizing the utility to recover them in rates.

The Respondents fail to fully appreciate the nature of the prudency review of additional capital costs required by the BLRA. A base load review order establishes that if a nuclear plant is constructed on cost and on schedule, the plant is used and useful for utility purposes such that its costs are prudent utility costs and are properly included in rates. S.C. Code Ann. Section 58-33-220(4).

S.C. Code Ann. Section 58-33-250 sets forth the requirements for an application under the BLRA. In applying for a base load review order, the utility has a duty to anticipate the components of plant capital costs. S.C. Code Ann. Section 58-33-250(A)(2).

S.C. Code Ann. Section 58-33-270 prescribes the terms and provisions necessary for a base load review order to comply with the BLRA. Pursuant to S.C. Code Ann. Section 58-33-

270 (B)(2), the Commission must determine the anticipated components of capital costs. S.C. Code Ann Section 58-33-270(E) provides the means for a utility to petition the Commission to modify its base load review order as circumstances warrant and as long as the changes are not the result of imprudence on the part of the utility.

S.C. Code Ann. Section 58-33-275 sets forth the legal impact of a base load review order issued in conformity with S.C. Code Ann. Section 58-33-270. A base load review order shall constitute a final and binding determination that a plant is used and useful for utility purposes and that its capital costs are prudent utility costs and are properly included in rates so long as the plant is constructed on schedule and within approved costs. S.C. Code Ann. Section 58-33-275(A). The determinations under S.C. Code Ann. Section 58-33-275(A) may not be challenged or reopened in any subsequent proceedings. S.C. Code Ann. Section 58-33-275(B). So long as the plant is constructed in accordance with approved schedule of capital costs determined by the Commission pursuant to S.C. Code Ann. Section 58-33-270(B), the utility is authorized to recover its capital costs through revised rate proceedings or in general rate proceedings. S.C. Code Ann. Section 58-33-275(C).

To a utility undertaking to construct a nuclear plant, the BLRA confers substantial benefits - an advance prudency determination and advance recovery of capital costs. While the BLRA permits a utility to petition the Commission to modify its base load review order to seek recovery of additional capital costs, the BLRA protects the ratepayer from the responsibility for imprudent financial obligations or costs. Consequently, SCE&G is entitled to recover only those costs it anticipates incurring in the construction of its nuclear plants. *South Carolina Energy Users Committee v. South Carolina Public Service Commission,* 388 S.C 486, 95, 697 S.E.2d 587 (2010).

Although S.C. Code Ann. Section 58-33-270(E) provides for the procedure by which a base load review order may be modified, it does not define the term prudence. However, S.C. Code Ann. Section 58-33-270(E) is only procedural. S.C. Code Ann. Section 58-33-275 sets forth the basis by which a party may challenge the prudency of a component of capital cost where, as here, a utility seeks recovery of capital costs in addition to those approved in its base load review order:

> In cases where a party proves by a preponderance of the evidence that there has been a material and adverse deviation from the approved schedules, estimates, and projections set forth in Section 58-33-270(B)(1) and 58-33-270(B)(2), as adjusted by the inflation indices set forth in Section 58-33-270(B)(5), the commission may disallow the additional capital costs that result from the deviation, but only to the extent that the **failure by the utility to anticipate** or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect. [Emphasis added]

As set out in the Appellant's initial brief, the prudency standard set out above is consistently found throughout the BLRA. The intent of the General Assembly was to authorize advanced recovery of prudently incurred capital costs. If the utility could have anticipated or avoided the additional costs which it seeks in this docket, given the information available to it at the time of its application under the BLRA, the Commission must disallow advanced recovery of those additional costs as imprudent.

Recognizing that S.C. Code Ann. Section 58-33-270(E) fails to define the term imprudence, the Respondent SCE&G offers the following definition to supplement the language of S.C. Code Ann. Section 58-33-270(E):

> "Prudence" in its noun and adjective forms is a word used sixteen times in the Base Load Review Act, yet it is not a defined term since there is no need to give it a special meaning. "Prudence" is universally understood. Under a prudency test, "[t]he standard by which management action is to be judged is that of reasonableness under the circumstances, given what was known or should have been known at the time the decision was made or the action was taken." *Georgia*

Power Co. v. Georgia Public Service Comm'n, 196 Ga. App. 572, 578, 396 S.E.2d 562, 569 (1990).

SCE&G Brief at p. 22.

The Respondent SCE&G concedes that the standard of prudence under S.C. Code Ann. Sections 58-33-270(E) and 58-33-275(E) are the identical standard. SCE&G Brief at pp. 24-25. The Respondent ORS similarly concedes the prudency standard applicable to S.C. Code Ann. Sections 58-33-270(E)(1) and 58-33-275(E) is identical. ORS Brief at p.15.

In support of the Commission's order, the Respondent ORS characterizes the Appellant's argument as suggesting that the standard of prudency under S.C. Code Ann. Section 58-33-275(E) is a higher standard than the standard of prudency under S.C. Code Ann. Section 58-33-270(E). While the Respondents and the Commission recognize that the prudency standard applicable to S.C. Code Ann. Sections 58-33-270(E)(1) and 58-33-275(E) are the identical standard, the Commission failed to apply the standard of prudency as required by the BLRA. The Commission held:

> Contrary to Petitioners' suggestion however, S.C. Code Ann. § 58-33-275(E) does not impose a new, higher or different standard for judging prudency than that contained in S.C. Code Ann. § 58-33-270(E). S.C. Code Ann § 58-33-275(E) embodies the established rule that prudency is not to be judged by hindsight but must be judged based on the information available to the utility at the time that meaningful decisions can be made to avoid or minimize costs. Contrary to Petitioners' assertions, S.C. Code Ann. § 58-33-270(E) does not create a special duty to identify costs in initial BLRA proceedings that is different from the duty that exists under the standard prudency rule. As indicated above, in Order No. 2009-104(A), the Commission found after a hearing that the cost projections presented in Docket No. 2008-196-E were reasonable and prudent considering the information available to SCE&G at that time. Nothing in S.C. Code Ann. § 58-33-275 indicates that S.C. Code Ann. § 58-33-275(E) is intended to create a different standard of review to override the prudency standard contained in S.C. Code Ann. § 58-33-270(E).
>
> Commission Order No. 2013-5, pp. 10-11.

However, in granting the Respondent SCE&G authority to recover an additional $278 million in capital costs, the Commission declined to apply the standard of prudence set out in its Order. When pressed by the Appellant to consider the recovery of the capital costs requested by SCE&G according to the standards set out in Order No. 2013-5, the Commission declined to do so. Instead, the Commission held:

> Under Petitioners' approach, the Commission is invited to rule, among other things, that SCE&G should have included in its 2008 cost forecasts the following:
>
> i. the effects on contractors' labor costs of the 2010 federal Health Care and Education Reconciliation Act (Change Order 12),
> ii. the impact on nuclear staffing and emergency planning requirements of the 2011 Fukushima event (Emergency Planning/Health Physics),
> iii. the impact on equipment and software costs of the recent emergence of cyber-security threats to the electric system (Change Order 14),
> iv. the possibility that, in the period 2008-2012, the Nuclear Regulatory Commission (NRC) and the industry might increase standards for the licensing and training of nuclear operators and craft workers (Operator/ Training Margin, Timing Variance to Support Craft),
> v. the possibility that the economic recession that began in late 2008 would result in other utilities not proceeding with new units and so not sharing common engineering costs for AP1000 projects (APOG/Plant Programs/ Procedures),
> vi. the costs and time required for complying with NRC aircraft impact standards for nuclear reactors that were not issued until 2009 (Change Order 16),
> vii. the fact that, in 2011-2012, Westinghouse Electric Company, LLC and the Shaw Group decided that stronger steel was required for certain modules used in the Units (Change Order 16), and
> viii. the fact that after excavation conducted during 2009-2011, rock conditions at the site might be found to be different from what pre-excavation drilling showed (Change Order 16).
>
> The Petitioners' approach would require the Commission to engage in a level of speculation that is incompatible with the purposes and intent of the BLRA. Furthermore, given the speculative nature of the analysis that would be required, Petitioners' interpretation of the BLRA would make the statute very difficult for this Commission to apply in practice.
>
> Commission Order No. 2013-5, pp. 6-8.

The provisions of the BLRA do not require the Commission to speculate as to whether capital costs are recoverable. The provisions of the BLRA do require the Commission to examine the information available to the utility at the time of its BLRA application and to make its determination of whether the capital costs requested in the docket below should have been anticipated by the utility so to be recoverable in future rates.

The application of the prudency determination under S.C. Code Ann. 58-33-275(E) is certainly different from that of the determination under S.C. Code Ann. Section 58-33-270(B). An application for a base load review order pursuant to S.C. Code Ann. Section 58-33-250 requires a utility to look forward and anticipate its components of capital costs based on the information available to it at the time. Pursuant to S.C. Code Ann. Section 58-33-270(B), the Commission makes its determination on the prudency of those costs in the BLRA application based on the same standard. Where, as here, a utility has failed to anticipate its components of capital costs in its BLRA application, a petition under S.C. Code Ann. Section 58-33-270(E) to deviate from its costs and schedules approved in the base load review order requires the Commission to consider the utility's request for recovery of its anticipated components of capital costs in light of the circumstances existing at the time of the application. While the Commission still has the duty as a first step to determine whether the components of capital costs are reasonable and necessary for the construction of the nuclear plants, the prudency review requires the Commission to take a second step to look back to the date of the application to determine whether the utility could have anticipated the additional costs. If the utility could have anticipated the additional components of capital costs at the time of its application, the Commission must deny the petition for additional costs as imprudent. S.C. Code Ann. Section 58-33-275(E).

The Commission erred below in that it only considered the circumstances existing at the time of the petition in this matter to determine whether the costs were prudent. For example, the question before the Commission was not only whether the shield building should be constructed to withstand the impact of an airplane crash but also whether SCE&G should have anticipated the extent to which it would be forced to harden the shield building and at what cost. The Commission found the hardening of the shield building to be reasonable and necessary for the construction of the nuclear plant but failed to consider whether SCE&G could have anticipated the costs when filing its application in 2008. In so doing, the Commission failed to conduct the full prudency review required under the BLRA.

In support of the Commission order, the ORS suggests that were the Commission to construe the BLRA to require the Commission to examine a petition for recovery of additional capital costs by the prudency standard posited by the Appellants, the effect would be to require SCE&G to "petition the Commission for a base load order modification each time a new and previously unanticipated cost becomes known. The result of this would be several modification petitions pending concurrently before the Commission." ORS brief at p. 19. The BLRA does require SCE&G to petition the Commission for a modification of approved schedules under a base load order. Moreover, SCE&G has petitioned the Commission annually for an order modifying its base load review order. The effect of the Appellant's argument is to simply require that the Commission follow the BLRA.

The ultimate question raised in this appeal is whether SCE&G's ratepayers must be required to pay for an additional $278 million in capital costs which the utility failed to anticipate in its 2008 BLRA application. Here, the ratepayers are protected from the responsibility for paying these imprudent financial obligations or costs.

The authority of *Georgia Power Co. v. Georgia Public Service Comm'n, supra,* commended to the Court by the Respondent SCE&G is helpful to an understanding of the notion of prudency as a regulatory concept. There, the Georgia Court upheld the disallowance by the Georgia Public Service Commission of substantial construction costs incurred by Georgia Power Co. in the construction of a nuclear plant. The prudency standard set out in *Georgia Power Co. v. Georgia Public Service Comm'n, supra,* was as follows:

> That standard was used by the PSC, as demonstrated in its final order, which first noted that only costs "prudently incurred, reasonable and not unlawful" were qualified for rate recognition. Costs incurred as a result of "imprudent action or inaction or [which] are unreasonable, excessive or unlawful are disqualified...." The prudency standard was further defined by the PSC: "The standard by which management action is to be judged is that of reasonableness under the circumstances, given what was known or should have been known at the time the decision was made or the action was taken. The concept of prudence implies a standard or duty of care owed to others. In building a nuclear power plant, the Nuclear Regulatory Commission requires the utility to exercise a high standard of care in order to protect the public health and safety. Similarly, given the costs involved and the rate impact of those costs on monopoly customers, this commission finds that the utility should be held to a high standard of care in making decisions and taking actions in its planning and constructing such a project. Thus, while the standard to be applied is reasonableness under the circumstances, where the risk of harm to the public and ratepayer is greater, the standard of care expected from the reasonable person is higher. Given this standard ..., a reasonable person is one who is qualified by education, training and experience to make the decision or take the action, using information available and applying logical reasoning processes." (Indention omitted.)
>
> The PSC also noted that excessive or unreasonable costs could result from a decision that was prudent when made, but that "[t]he determinative issue is not whether the decision to incur the costs was prudent, but *who should bear such costs*. [footnote omitted] Such an expenditure represents *579 an additional expense to the project which is certainly more in the control of utility management than the ratepayers. Therefore, it is only appropriate that such excessive or unreasonable costs become the responsibility of the utility and not the ratepayer."
>
> *Georgia Power Co. v. Georgia Public Service Comm'n,* 196 Ga. App. 578-579.

The costs authorized by the Commission below may be reasonable and necessary costs for the construction of the nuclear plants. However, the BLRA and traditional concepts of ratemaking require the utility to exercise due care to anticipate its costs when undertaking to construct a nuclear plant. The utility is charged with possessing the necessary expertise to exercise a high level of care in making decisions in the planning and construction of complicated, costly and risky nuclear plants. Where a utility fails to discharge its duty of care to its ratepayers giving rise to costs which are imprudent under the BLRA, it is only appropriate for the utility to be held responsible for payment of these cost overruns.

While the standard of prudence under the BLRA is not a higher standard than that of traditional ratemaking, the standard of care owed by a utility to its ratepayers in the design and construction of the nuclear plants is greater than that SCE&G demonstrated in this record. The Commission was required under the application of any standard of prudency to make its determination as to whether SCE&G could have anticipated the costs authorized in this docket. The Commission was under no duty to speculate. The Commission was under a duty to determine whether under the circumstances existing at the time of SCE&G's BLRA application, the utility could have anticipated the components of capital costs requested in this docket. The Commission declined to apply the standard of prudency required under the BLRA and should be reversed.

ARGUMENT

II.

THE RECORD IS REPLETE WITH EVIDENCE THAT THE RESPONDENT SCE&G COULD HAVE ANTICIPATED THE COSTS AUTHORIZED TO BE PLACED IN RATES BY THE COMMISSION AND CONSEQUENTLY, THE COMMISSION ERRED IN AUTHORIZING THE COSTS BE PLACED IN RATES AS PRUDENT UTILITY COSTS.

It is undisputed that the $278 million in capital costs authorized by the Commission to be placed in rates constitute a material and adverse deviation from the approved schedules and estimates established by SCE&G's base load review order. The Appellants met their burden of establishing a prima facie case of the imprudence of the capital costs shifting the burden of proof to SCE&G to demonstrate that its failure to anticipate or avoid the additional costs was not imprudent under the BLRA. S. C. Code Ann. Section 58-33-275(E); S. C. Code Ann. Section 58-33-240(D). The evidence of record reflects that SCE&G could have anticipated the costs approved by the Commission and the Commission should have denied SCE&G's petition.

The Respondents argue that the Commission properly considered the evidence offered by the utility below and properly found and concluded that $278 million in additional capital costs were prudent, to wit:

Change Order No. 16	$137.5 million
Owner's Costs:	$131.6 million
Transmission Costs:	$ 7.9 million
Cyber Security:	$ 0.9 million
Healthcare and Wastewater Piping:	$ 0.1 million
TOTAL (approximate amounts)	$278.0 million

A thorough recitation of the facts explaining the imprudence of these costs is set out in the statement of facts in Appellant's initial brief. However, the timing of SCE&G's application for a base load review order in 2008 was fraught with risk.

SCE&G's haste to file its BLRA application certainly contributed to its imprudence. The Combined Operating License ("COL") had not been issued and its issuance was contingent on developments both within and without SCE&G's control. The reactor design had not received final approval and Westinghouse had no way of assuring the utility that the Nuclear Regulatory Commission ("NRC") would approve the design within deadlines established by the contract between Westinghouse and SCE&G. The COL was contingent upon the issuance of the final approval of the nuclear plant design by the NRC and also the wetlands certification by the Army Corps of Engineers and the Environmental Protection Agency ("EPA"). In its BLRA application, SCE&G's anticipated components of transmission costs were based on estimates supported by early conceptual designs. The utility failed to appreciate the urgency of the need to obtain timely approval of its wetlands certificates and attempted to site its transmission lines within new and untested corridors. The EPA refused to grant SCE&G's wetlands certification requiring SCE&G to site the transmission lines in existing rights of way giving rise to further the delay. The utility failed to anticipate its owner's costs such as staffing and facilities because it was too busy negotiating its contract with Westinghouse to take the time to make the estimates required by the BLRA. In spite of the time and effort expended in negotiating its contract with Westinghouse, SCE&G failed to negotiate a contract with Westinghouse that protected SCE&G's rate payers from cost overruns associated with additional capital costs and construction delays. Moreover, at least one SCE&G official complained that a requirement that the utility anticipate the components of its owner's capital costs before the utility's BLRA application would be to put the cart before the horse. SCE&G was not forced to file its BLRA application when it did. However, in its rush to build its nuclear plants, it failed to anticipate its components of capital costs and in doing so, acted imprudently.

The evidence of record supports the Appellants' contention. Dr. Mark Cooper testified:

- The fact that there would be difficulties in finding adequately qualified and trained personnel was widely recognized.
- The fact that the supply chain was stretched thin was widely recognized.
- The fact that there would be bumps in the road of regulatory approval was also certainly predictable. The failure to comply with NRC requirements is the responsibility of the utility, not the ratepayers or the NRC.
- Given the history of nuclear reactor construction in the U.S. and around the world, the fact that requirements would evolve over time should have been foreseen and included in the cost estimate.

(Tr. pp. 970-971; Cooper prefiled direct testimony, pp. 22-23).

Dr. Cooper testified that every one of the causes of the cost overruns for which SCE&G was seeking recovery should have been evident to a prudent utility at the time it filed its BLRA application. Indeed, SCE&G charged ahead with a low-ball estimate of its capital costs in spite of this clear evidence of risk, underestimating the costs, for which it now seeks recovery through a third bite of the apple under the BLRA. Moreover, Dr. Cooper testified that the fact that SCE&G identified a series of risks associated with the construction of the two nuclear reactors in Jenkinsville, South Carolina, does not exempt it from bearing some of the costs of those risks. (Tr. p. 970; Cooper prefiled direct testimony, p. 22).

SCE&G has not shouldered any of the costs associated with the risks of its nuclear construction. Dr. Cooper's table reflecting the allocation of cost overruns bears repeating:

Table 1: Allocation of Cost Overruns

	Change Orders	Owner Cost	Transmission	Total
Vendor	$76	0	0	76
Ratepayers	$156	276	21	453
Owner	$0	0	0	0

(Tr. p. 972; Cooper prefiled direct testimony, p. 24).

The record reflects that under the Commission's construction and application of the BLRA, SCE&G's ratepayers have borne the brunt of the utility's cost overruns. Under applicable standards of prudency, SCE&G had a duty to avoid these cost overruns and by its failure bears responsibility for paying for its failure to anticipate these costs. The Commission's construction of the BLRA deprives the ratepayers of the protection from responsibility for imprudent obligations or costs.

Moreover, since SCE&G's base load review order, the circumstances now existing suggest that further construction of one or both nuclear plants may no longer be prudent. The Respondents argue that SCE&G's base load review order is conclusive and the decision to build the plants and the associated costs are considered prudent as a matter of law. However, the evidence of record raises the question of whether continued construction of one or both plants is reasonable and prudent. SCE&G has a duty to its ratepayers to consider the need for and the cost of continued construction of the two plants. The Commission failed to examine fully the questions of fact raised by Dr. Cooper's testimony as to whether SCE&G fully studied the continued need for both nuclear plants, the available alternatives and the costs to the ratepayer. Construction of one or both plants should proceed only if prudent. Accordingly, the Commission erred in failing to fully address the prudency of proceeding with the construction of both plants.

The evidence of record reflects SCE&G failed to meet the standard of care imposed upon it by the BLRA in making prudent decisions and taking prudent actions in its planning and construction of its two nuclear plants. While the standard to be applied is reasonableness under the circumstances, where, as here, the risk of harm to the public and ratepayer is greater, the standard of care expected from SCE&G is higher. Given this standard, SCE&G was required to

act as one qualified by education, training and experience as experts in the construction and operation of nuclear plants to anticipate its components of capital costs in its BLRA application, using available information and applying logical reasoning. SCE&G proposed to construct two nuclear plants so novel in design that the plants had not been approved for construction. Notwithstanding that under the BLRA time was of the essence, SCE&G failed to take the steps necessary to expedite the licensing process. Having identified the risks to the ratepayers associated with its venture, SCE&G failed to negotiate a contract which fully protected its ratepayers against cost overruns beyond their control. Indeed, prior to its BLRA application, SCE&G officials were too busy to anticipate the owner's costs necessary for the construction of the nuclear plants. SCE&G breached the duty of care it owed to its ratepayers in the design and construction of its nuclear plants. *Georgia Power Co. v. Georgia Public Service Comm'n, supra.* The evidence of record demonstrates that in its BLRA application SCE&G could have anticipated or avoided the components of capital costs requested in its petition below and in failing to do so, acted imprudently.

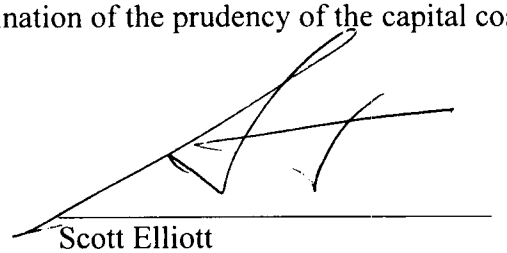
The Commission declined to consider the evidence of record demonstrating SCE&G's imprudence. Here, the evidence of record compels the finding that SCE&G acted imprudently. The Commission erred and should be reversed.

CONCLUSION

The Commission's construction of the BLRA is contrary to the plain meaning of the statute and is not entitled to deference by this Court. *Kiawah Development Partners, II v. South Carolina Department of Health and Environmental Control,* 401 S.C. 570, 738 S.E2d 455 (2013). The goal of the BLRA is to allow SCE&G to recover its prudently incurred costs associated with the nuclear facility while protecting ratepayers from responsibility of imprudent

financial obligations or costs. *South Carolina Energy Users Committee v. South Carolina Public Service Commission, supra.* The Commission's construction of the BLRA fails to protect SCE&G's ratepayers.

For the foregoing reasons and those set out in its initial brief, the South Carolina Energy Users Committee respectfully submits that Orders 2012-884 and 2013-5 of the South Carolina Public Service Commission be reversed and that the matter be remanded to the Commission with instructions to issue an order denying SCE&G's petition for $283 million in additional capital costs and for a full and complete determination of the prudency of the capital costs to be incurred by continuing to construct the units.



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December 2, 2013